Citation Guide to Binding and Persuasive Case Law

The concept of *stare decisis*: Under the doctrine of *stare decisis*, lower courts must accept the law as decreed by courts of superior jurisdiction. (*Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450, 455; *People v. Brown* (1985) 169 Cal.App.3d 728, 736; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550.)

The rulings and other language in published California and United States supreme and appellate court opinions are binding authority as follows:

United States Supreme Court

Opinions of the U.S. Supreme Court **are binding** on all California courts on questions of federal constitutional law. (*People v. Daan* (1984) 161 Cal.App.3d 22, 28; *People v. Superior Court (Williams)* (1992) 8 CA4688, 702; *Calderon v. City of Los Angeles* (1971) 4 Cal.3d 251, 264; *Del Monte v. Wilson* (1992) 1 Cal.4th 1009, 1023; *General Motors Corp. v. City of Los Angeles* (1995) 35 CA41736, 1749.)

> **Note:** Plurality U.S. Supreme Court decisions *are not binding*. (*Texas v. Brown* (1983) 460 U.S. 730, 737 ["While not a binding precedent, as the considered opinion of four Members of this Court it should obviously be the point of reference for further discussion of the issue."]; *Horton v. California* (1990) 496 U.S. 128, 136; *People v. Camilleri* (1990) 220 Cal.App.3d 1199, 1206 ["Reasoning that does not command the assent of a majority of the United States Supreme Court is not a holding."].)
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> **Exception**: Plurality SCOTUS opinions *are binding* when the "position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. U.S.* (1977) 430 U.S. 188, 193 ["When a fragmented Court decided a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds."; *U.S. v. Williams* (9th Cir. 2006) 435 F.3d 1148, 1158 ["This narrower test—which excludes confessions made after a deliberate, objectively ineffective midstream warning—represents *Seibert's* holding."]; *U.S. v. Mashburn* (4th Cir. 2005) 406 F.3d 303, 308-9; *U.S. v. Stewart* (7th Cir. 2004) 388 F3 1079, 1090; *U.S. v. Aguilar* (8th Cir. 2004) 384 F.3d 520, 525; *U.S. v. Fellers* (8th Cir. 2005) 397 F.3d 1090, 1098.

California Supreme Court

Opinions of the California Supreme Court **are binding** on all California courts. (*People v. Harvey* (1980) 112 Cal.App.3d 132, 138; *People v. Neer* (1986) 177 Cal.App.3d 991, 999; *People v. Linkenauger* (1995) 32 Cal.App.4th 1603, 1613.)

> **Plurality CSC decisions**: Not binding. *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 829; *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 918 [a

plurality opinion "lacks authority as precedent"]; *Roy Supply, Inc. v. Wells Fargo Bank* (1995) 39 Cal.App.4th 1051, 1067.)

Consequences of subsequent actions by the California Supreme Court: The binding force of a published case may be affected by subsequent actions, as follows:

Petition for Review granted: The California Supreme Court's act of granting review of a decision of the Court of Appeal automatically vacates the decision and requires that it be deleted from the official reports. (*People v. Superior Court (Clark)* (1994) 22 Cal.App.4th 1541, 1547; *People v. Shuey* (1975) 13 Cal.3d 835, 840; *People v. Shira* (1976) 62 Cal.App.3d 442, 464, fn.15; Cal. Rules of Court, Rule 976(d).)

Petition for Review denied: Denial of review of a case by the California Supreme Court is not an expression of approval, but a denial is not without significance as to the views of the members of the court. (*Renfrew v. Loysen* (1985) 175 Cal.App.3d 1105, 1109; *McClothlen v. DMV* (1977) 71 Cal.App.3d 1005, 1017; *Fire Ins. Exchange v. Abbott* (1988) 204 Cal.App.3d 1012, 1024; *In re Eli F.* (1989) 212 Cal.App.3d 228, 234-35 ["While the denial of review by the Supreme Court does not normally add weight to the opinion of the District Court of Appeal it does not follow that such a denial is without significance." Citing *DiGenova v. State Board of Education* (1962) 57 Cal.2d 167, 178].)

Denial of review may be taken as approval of the conclusion of the Court of Appeal but not necessarily all of its reasoning. (*People v. Bolden* (1990) 217 Cal.App.3d 1591, 1598.)

Denial of review has no weight if the case conflicts with a decision of the California Supreme Court.) *People v. Triggs* (1973) 8 Cal.3d 884, 890.)

Certiorari denied: The Supreme Court's denial of a writ of certiorari "imports no expression of opinion upon merits of the case." (*Teague v. Lane* (1989) 489 U.S. 288, 296.)

Non-binding precedent: In the absence of binding Supreme Court or California authority, courts may consider the decisions of the federal circuit courts to the extent that they establish a "constitutional norm" on the issue. (*U.S. v. Katzin* (3C 2014) 769 F3 163, 186.)

California Court of Appeal

Published decisions of every district **are binding** on all superior court judges. (*Hale v. Superior Court* (1975) 15 Cal.3d 221, 229, fn.3; *Department of Consumer Affairs v. Superior Court* (1977) 71 Cal.App.3d 97, 99; *People v. Superior Court (Clark)* (1994) 22 Cal.App.4th 1541, 1547-49.)

Note: Court of Appeal justices are not required to follow the opinions of Justices in other appellate divisions or districts, although they will usually do so unless there is good reason to disagree. (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1471 ["One district

or division may refuse to follow a prior decision of a different district or division."]; *Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 485; *McGlothlen v. DMV* (1977) 71 Cal.App.3d 1005, 1017; *People v. Bennett* (1983) 139 Cal.App.3d 767, 771; *Henry v. Associated Indemnity Corp.* (1990) 217 Cal.App.3d 1405, 1416.)

Nonpublication: "Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." (Rules of Court, rule 8.1115(a).)

Non-published cases of the California Court of Appeal are not to be cited or considered as having precedential value. (*People v. Russo* (2001) 25 Cal.4th 1124, 1133, fn.1; *Jenson v. Kenneth Mullen Co.* (1989) 211 Cal.App.3d 653, 658; *Faitz v. Ruegg* (1981) 114 Cal.App.3d 967, 970; Cal Rules of Court, rule 8.1115(a).) **However**, the court's analysis in an unpublished opinion may, however, be properly considered for its **persuasive value**. (*People v. McDaniels* (1994) 21 Cal.App.4th 1560, 1566, fn.2 ["analysis in an unpublished opinion may properly be considered."]

The California Supreme Court is apparently amenable to the limited use in merits briefs of unpublished opinions. Recently in *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 113, the court itself noted — without criticism— that the plaintiff "references an unpublished case" simply to demonstrate that "costs may in some FEHA cases be considerable."

Note the semantic differences between "citing" and "referencing."

Exception: A non-published opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

Cal Rules of Court, rule 8.1115(b).

Other possible exceptions:

- Plaintiff Magazine also notes that when petitioning the court for review, counsel "can show the need to 'secure uniformity' by citing conflicting published decisions and unpublished decisions. Citing unpublished decisions to show the issue is unsettled does not violate [rule 8.1115(a)] because the petitioner is not relying on the unpublished decision as precedent that should be followed." Daniel U. Smith & Valerie T. McGinty, Obtaining California Supreme Court Review, Plaintiff Magazine (Dec. 2012).

- In *People v. Hill* (1998) 17 Cal.4th 800, 847, fn. 9, the court took judicial notice of an unpublished opinion and explained that "[b]ecause we do not cite or rely on that opinion, the judicial notice does not in this circumstance run afoul of [rule 8.1115(a)]."

California Superior Trial Courts

According to the California Rules of Court, Rule 8.1115, unpublished court opinions are not to be cited, and since trial court opinions are not published, they must not be cited.

""[T]rial courts make no binding precedents." (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 282, citing *Fenske* v. *Board of Administration* (1980) 103 Cal. App.3d 590, 596; and 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 763, p. 730.)

It is settled that trial court opinions have no precedential value and may not be cited. (*Santa Ana Hasp. Ctr. v. Belshe* (1997) 56 Cal.App.4th 819, 831; see also *TBG Ins. Services Corp. V. Superior Court* (2002) 96 Cal.App.4th' 443,447, fn. 2 (noting that under predecessor to CRC 8.115 it is improper to cite to an unpublished superior court decision.) Indeed, the improper citation of unpublished or depublished opinions is grounds to strike a brief or to impose monetary sanctions (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 885.)

*Remember that the trial courts in the superior court are different than the appellate divisions of those same courts (see below).

Superior Court Appellate Divisions

"Additionally, although decisions of the appellate department have persuasive value, they are 'of debatable strength as precedents,' and 'are not, of course, binding on ... the higher reviewing courts....'" (*Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 782, fn.9, citing (6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 671, p. 4584.)

9th Circuit and other Federal Appellate Courts

9th Circuit and other federal appellate court opinions are **not binding** on California courts, but may have persuasive value. (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 879 ["Where the federal circuits are in conflict, the authority of the Ninth Circuit (which decides appeals from the federal courts in California) is entitled to no greater weight than decisions from other circuits. Where there is more than one appellate court decision, and such appellate decisions are in conflict, the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions." Citing *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456]; *People v. Bradford* (1997) 15 Cal.4th 1229, 1305 ["Such decisions, as we often have observed, provide persuasive rather than binding authority."]; *People v. Rooney* (1985) 175 Cal.App.3d 634, 644; *People v. MacAvoy* (1984) 162 Cal.App.3d 746, 767, fn.13; *People v. Daan* (1984) 161 Cal.App.3d 22, 28, fn.2; *People v. Neer* (1986) 177 Cal.App.3d 991, 1000-1; *People v. Wallace* (1992) 9 Cal.App.4th 1515, 1519, fn.3; *People v. Crawford* (1990) 224 Cal.App.3d 1, 8; *People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1587; *Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 971, fn.19; *Smith v.*

County of Los Angeles (1994) 24 Cal.App.4th 990, 997, fn.2; *People v. Cahan* (1955) 44 Cal.2d 434, 450-51 ["[I]f the federal cases indicate needless limitations on the right to conduct reasonable searches and seizures or to secure warrants, this court is free to reject them."].)

> **Federal questions**: The decisions of the lower federal courts on federal questions are merely persuasive. Where lower federal court precedents are divided or lacking, state courts must necessarily make an independent determination of federal law. (*Rohr Aircraft Corp. v. San Diego* (1959) 51 Cal.2d 759, 764; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 506, pp. 569–570; *In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 839.)

U.S. District Courts

"A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." (*Camreta v. Greene* (2011) 563 U.S. 692, 709 fn.7, citing to 18 J. Moore et al., Moore's Federal Practice § 134.02[1][d], p. 134-26 (3d ed.2011).)

Attorney General's Opinions

Not binding, but may have persuasive value. (*People v. Gar*th (1991) 234 Cal.App.3d 1797, 1800; *Tafoya v. Hastings College* (1987) 191 Cal.App.3d 437, 445, fn.7; *State of C ex rel. State Lands Com. v. Superior Court* (1995) 11 Cal.4th 50, 71.)

Out-of-State Decisions

In the absence of California authority on point, courts may consider decisions from other states for their persuasive value. (*Squaw Valley Ski Corp. v. Superior Court* (1992) 2 Cal.App.4th 1499, 1508, fn.2; *Acco Contractors Inc. v. McNamara & Peppe Lumber* (1976) 63 Cal.App.3d 292, 296; *Intellidata Inc. v. State Board of Education* (1983) 139 Cal.App.3d 594, 599; *J.C. Penney Casualty Ins. Co. v. M.K.* (1991) 52 Cal.3d 1009, 1027.)

Proposition 8

Pursuant to California's Proposition 8, evidence may be suppressed only if it was obtained in violation of the U.S. Constitution. (*People v. Hull* (1995) 34 Cal.App.4th 1448, 1455; *In re Lance W.* (1985) 37 Cal.3d 873; *People v. May* (1988) 44 Cal.3d 309; *People v. Plyler* (1993) 18 Cal.App.4th 535, 544; *People v. Deltoro* (1989) 214 Cal.App.3d 1417, 1423-24; *People v. Rosales* (1987) 192 Cal.App.3d 759, 767; *People v. Banks* (1990) 217 Cal.App.3d 1358, 1362-63. **ALSO SEE** *People v. Profit* (1986) 183 Cal.App.3d 849, 880 ["Our preoccupation with restrictions on police activity has become so great that an impression circulates that the chief end of criminal law is to prevent invasions by police rather than invasions by criminals. Unquestionably, this preoccupation has led to the release of patently guilty criminals and thereby weakened the deterrent effect of criminal law."].)

Thus, evidence will not be suppressed on grounds that it was obtained in violation of a statute or case based on independent state grounds. (*People v. Brannon* (1973) 32 Cal.App.3d 971, 975 ["Evidence obtained in violation of a statute is not inadmissible per se unless the statutory

violation also has a constitutional dimension."]; *U.S. v. Ani* (9C 1998) 138 F3 390, 392 ["Absent a constitutional violation or a congressionally created remedy, violation of an agency regulation does not require suppression of evidence."]; *U.S. v. Davis* (9C 1991) 932 F3 752, 758 ["For cases arising in California, the application of state standards would in any even prove redundant because the California State Constitution no longer affords independent state grounds for excluding relevant evidence."].

Non-published opinions

Non-published cases of the California Court of Appeal are not to be cited or considered as having precedential value. (*People v. Russo* (2001) 25 Cal.4th 1124, 1133, fn.1; *Jenson v. Kenneth Mullen Co.* (1989) 211 Cal.App.3d 653, 658; *Faitz v. Ruegg* (1981) 114 Cal.App.3d 967, 970; Cal Rules of Court, rule 977.

However, "analysis in an unpublished opinion may properly be considered." (*People v. McDaniels* (1994) 21 Cal.App.4th 1560, 1566, fn.2.)

Statutory Construction

Legislative intent: If the language of a statute is clear, legislative intent is irrelevant. (*In re Lance W.* (1985) 37 Cal.3d 873, 886; *In re York* (1995) 9 Cal.4th 1133, 1142.)

Language subject to two different interpretations: But if the language is subject to different interpretations, legislative intent may be considered. (*People v. Superior Court (Ferguson)* (2005) 132 Cal.App.4th 1525, 1532-33. **ALSO SEE** *Conroy v. Aniskoff* (1993) 507 U.S. 511, 519 (conc. opn. of Scalia, J.) ["The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators."]; *U.S. v. Smith* (9C 1998) 155 F3 1051, 1056, fn.9 ["As is most often the case, the legislative history is of no help whatsoever."]; *Steve Jackson Games, Inc. v. U.S. Secret Service* (5C 1994) 36 F3 457, 462 ["But, when interpreting a statute as complex as the Wiretap Act, which is famous (if not infamous) for its lack of clarity, we consider it appropriate to note the legislative history for confirmation of our understanding of Congress' intent."].)

Considering multiple codes: Different code sections pertaining to an issue may be considered together. (*People v. Ashley* (1971) 17 Cal.App.3d 1122, 1126 ["It is a well settled rule of statutory construction that the separation of the various statutes into codes is for convenience only, and the codes are to be read together and regarded as blending into each other thereby forming but a single statute."].)